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No. 381.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

NATIONAL AIRCRAFT CORPORATION,
a Corporation, Subsidiary Debtor,
JEROME F. DUGGAN, Trustee in Reorganization
of National Aircraft Corporation,
Subsidiary Debtor,
Petitioner,

vs.

CHARLES J. GREEN, Substitute Trustee Under Trust
Agreement Known as Trust No. 140,
Respondent.

BRIEF

Of Respondent, Charles J. Green, Substitute Trustee Under Trust Agreement Known as Trust No. 140, in Opposition to Petition for Writ of Certiorari.

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OPINIONS BELOW AND JURISDICTION.

The opinion of the Court of Appeals for the Eighth Circuit on original submission is reported at 240 F. (2d) 751, and the per curiam opinion of that court modifying its original opinion is reported at 243 F. (2d) 109.

The petitioner has invoked the jurisdiction of this Court under Title 11, United States Code, Section 1254, which is

a section of the Bankruptcy Act concerning Railroad Adjustments which has been repealed. It is believed that petitioner intended to invoke the jurisdiction of this Court under Title 28, United States Code, Section 1254; on that basis, respondent raises no questions concerning the jurisdiction of this Court.

QUESTIONS PRESENTED.

The petitioner asserts that seven questions are presented for review. Actually, only one question is presented by the petitioner:

> Whether a Court may invoke universal and age-old equitable principles to prevent unjust enrichment against a Reorganization Trustee who derives his authority under the National Bankruptcy Act, Title 11, United States Code, and award adequate remedies against the estate of the debtor to protect innocent persons from the inequitable conduct of such a Reorganization Trustee in Bankruptcy.

STATEMENT.

Petitioner's statement of the proceedings below is substantially correct. However, in order that this Court may be apprised of all the facts upon which this litigation is based, the respondent adopts as his statement of facts the recitation of said facts as set out in the opinion of the Court below, reported in 240 F. (2d) 751, at pages 752-756. The historical background of these reorganization proceedings which have resulted in widespread and prolonged litigation were before this Court and are set out in the opinion in **Duggan v. Sansberry** (1946), 327 U. S. 499, 500-503. It was in this confused and contradictory atmosphere that respondent, on behalf of the beneficiaries of his trust, purchased the property involved in innocence and good faith.

ARGUMENT.

The petitioner in seeking certiorari has not established any of the grounds upon which the writ of certiorari of this Court is customarily issued.

A. The petitioner does not even assert the existence of a conflict between the decision as to which review is sought and that rendered by this Court or any Court of Appeals. There is in fact no such conflict and the decision below turns upon its own facts.

B. The petitioner asserts (Petition, p. 2) that the jurisdiction of this Court is invoked because of the "public importance of the decision involved." No attempt, however, is made to demonstrate to this Court any such importance. The petitioner's Argument (Petition, pp. 13-18) is merely a recital and restatement of the facts by the petitioner and of the findings of the District Court and the Court of Appeals.

The decision of the Court of Appeals below rests upon and is circumscribed by the particular facts of the case and few other litigants, if any, may possibly be affected by it. The issue involved in this litigation arose out of a long history of developments in the reorganization proceedings of National Aircraft Corporation and Christopher Engineering Company which have, on prior occasions, come before this Court, as well as the Supreme Court of Missouri, the United States Court of Appeals for the Seventh Circuit and the United States Court of Appeals for the Eighth Circuit. **Duggan v. Sansberry** (1946), 327 U. S. 499; **Oglesby & Simpson Supply Co. v. Duggan** (C. A. 8, 1949), 174 F. (2d) 904; **Magidson v. Duggan** (C. A. 8, 1950), 180 F. (2d) 473; **United States v. Duggan** (C. A. 8, 1954), 210 F. (2d) 926; **Magidson v. Duggan** (C. A. 8, 1954), 212

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The respondent here was wholly innocent of the commencement or the pendency of the proceedings instituted by the Reorganization Trustee in the Indiana District Court at the time he purchased the real estate involved and, indeed, for a period of approximately two years thereafter. The respondent was the innocent victim of what this Court in **Duggan v. Sansberry**, 327 U. S. 499, 500, described as "a clash of jurisdiction," and he was victimized by the unconscionable conduct of the petitioner in failing to notify respondent for a period of almost two years of the adverse claim asserted against the property which he in good faith and innocence had purchased at a judicial sale conducted by the District Court in Indiana.

Questions resolved by the opinion of the Court below arose solely because of the peculiar facts of this astonishing reorganization proceeding and were created by the ex parte order of the Missouri District Court on April 19, 1944 (R. 103-105, Petitioner's Brief, p. 10; see opinion below 240 F. [2d] 751, 753). Validity of that order and the facts upon which it was based have importance only to these litigants, and the consequences of the actions taken by the District Court of Missouri, and by the Reorganization trustee, petitioner here, have significance only to this litigation. The opinion of the Court of Appeals for the Eighth Circuit in **Magidson v. Duggan** (1954), 212 F. (2d) 748, demonstrates the limited but highly significant importance of the conduct of this particular reorganization proceeding. That Court said:

> "There was, in our opinion, no adequate evidentiary basis for the findings of the District Court that National was ever a subsidiary of Christopher Engineering or that these corporations and the partnerships

of Brown and Christopher were to all intents and purposes a single entity or enterprise. These findings, we think, are clearly erroneous. * * *" (l. c. 758).

* * * * * * * *

"The history of these reorganization proceedings, out of which so much litigation has arisen, has been stated in greater detail than is necessary to present the questions under review. This has been done in part for the purpose of illustrating the unfortunate results which flow from drawing into reorganization proceedings under Chapter X of the Bankruptcy Act corporations which should be liquidated, and of unnecessarily interfering with proceedings in a state court and with prior bankruptcy proceedings in other jurisdiction. * * *" (l. c. 760).

The Court of Appeals, by its decision in the instant case, has corrected and adjusted the equities of the litigants here and that decision was based upon its own peculiar facts which were the result of a conflict of jurisdiction between two Federal District Courts and the extraordinary conduct of the petitioner in asserting the right to retain both the proceeds of a sale and the subject of the sale. Such a peculiar and inequitable situation and the solution thereof, while of considerable importance to the parties to this litigation, do not involve any novel or important questions for the attention of this Court.

C. The decision of the Court of Appeals below is clearly correct on the issues presented. The Court, with some obvious feeling for the injustice of petitioner's conduct, stated at 240 F. (2d) 751:

"The overriding equitable issue involved in this appeal is whether a bankruptcy trustee can, in conscience, be permitted, over the protest of an innocent purchaser, to retain both the real estate offered at

auction, and the money paid for it by such innocent purchaser, at a void sale" (l. c. 752).

* * * * * * *

"Of the several other theories of attack upon the judgment there is one that is so entirely clear and completely conclusive, and that so perfectly lends itself to the adjustment of the equities between the parties, that we put aside all others. That attack is based upon the universal and age-old equitable principle that one who sells real estate, at a void judicial or quasi-judicial sale, to a purchaser who pays the purchase price in good faith and without actual knowledge of facts or circumstances rendering the sale void, may not, in conscience, be permitted to keep both the real estate and the purchase money; and that, if, as here, specific performance cannot be had, the purchaser is entitled to an equitable lien upon the real estate in an amount equal to the purchase price paid for it plus his costs of permanent improvements made thereon and his expenses in maintaining and protecting the same, less rents and profits received by him therefrom, with simple interest, at the applicable legal rate, computed upon unreimbursed balances. Typical of the many cases so holding are Shanklin v. Ward, 291 Mo. 1, 236 S. W. 64; Patillo v. Martin, 107 Mo. App. 653, 83 S. W. 1010; Henderson v. Langley, 76 Mo. 226; Townsend v. Tipton, 289 Ky. 776, 160 S. W. 2d 161, 142 A. L. R. 306; Faughnan v. Bashlor, 1927, 163 Ga. 525, 136 S. E. 545; Federal Reserve Bank of Kansas City v. Omaha National Bank, 8 Cir., 45 F. 2d 511; Beatty v. Guggenheim Exploration Co., 225 N. Y. 380, 122 N. E. 378; Scott on Trusts, Vol. 3, Sec. 462.2, p. 2317; Pomeroy on Equity, Sec. 1053.

"Though in this instance, the purchase price paid by appellant for this real estate was not originally paid to Duggan, Trustee, but to Sansberry, Trustee, that

money was paid over by Sansberry to Duggan in July, 1946, with the result that since that time, Duggan, Trustee, has had both the real estate and the money paid by appellant for its purchase. In those circumstances, it would be shockingly inequitable and unjust to permit him to retain both" (l. c. 757-758).

Petitioner asserts that general equitable principles have no application in matters involving a Reorganization Trustee and asks this Court to review a decision of the Court of Appeals which corrected shockingly inequitable and unjust conduct of such a Trustee. In this assertion, petitioner is clearly in error.

The applicability of equitable principles in the administration of the affairs of a bankrupt is clearly demonstrated by the decided cases. This Court, in **Prudence Realization Corporation v. Geist** (1942), 316 U. S. 89, 95, said:

"* * * The court of bankruptcy is a court of equity to which the judicial administration of the bankrupt's estate is committed. Securities & Exch. Commission v. United States Realty & Improv. Co., 310 U. S. 434, 455-457, 84 L. ed. 1293, 1303-1305, 60 S. Ct. 1044, 42 Am. Bankr. Rep. (N. S.) 602, and it is for that court—not without appropriate regard for rights acquired under rules of state law—to define and apply federal law in determining the extent to which the inequitable conduct of a claimant in acquiring or asserting his claim in bankruptcy requires its subordination to other claims which, in other respects, are of the same class. Cf. Taylor v. Standard Gas & E. Co. 306 U. S. 307, 83 L. ed. 669, 59 S. Ct. 543, 38 Am. Bankr. Rep. (N. S.) 692, supra; Pepper v. Litton, 308 U. S. 295, 84 L. ed. 281, 60 S. Ct. 238, 41 Am. Bankr. Rep. (N. S.) 279, supra" (l. c. 95).

In the earlier decision in **Pepper v. Litton** (1939), 308 U. S. 295, this Court granted certiorari because of an ap-

parent restriction by the lower court decision on the power of the bankruptcy court in the exercise of its broad equitable powers. Mr. Justice Douglas speaking for the Court discussed the applicability of equitable principles in proceedings under the Bankruptcy Act and said:

> "Courts of bankruptcy are constituted by §§ 1 and 2 of the Bankruptcy Act ([July 1, 1898] 30 Stat. at l. 544, chap. 541, 11 U. S. C. A., §§ 1, 11) and by the latter section are invested 'with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings.' Consequently this Court has held that for many purposes 'courts of bankruptcy are essentially court of equity, and their proceedings inherently proceedings in equity.' Local Loan Co. v. Hunt, 292 U. S. 234, 240, 78 L. ed. 1230, 1232, 54 S. Ct. 695, 93 A. L. R. 195, 24 Am. Bankr. Rep. (N. S.) 668. By virtue of § 2 a bankruptcy court is a court of equity at least in the sense that in the exercise of the jurisdiction conferred upon it by the act, it applies the principles and rules of equity jurisprudence. Larson v. First State Bank (C. C. A. 8th), 21 F. (2d) 936, 938, 10 Am. Bankr. Rep. (N. S.) 588. Among the granted powers are the allowance and disallowance of claims; the collection and distribution of the estates of bankrupts and the determination of controversies in relation thereto; the rejection in whole or in part 'according to the equities of the case' of claims previously allowed; and the entering of such judgments 'as may be necessary for the enforcement of the provisions' of the act. . . . The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial

justice from being done. By reason of the express provisions of § 2 these equitable powers are to be exercised on the allowance of claims, a conclusion which is fortified by § 57 (k). For certainly if, as provided in the latter section, a claim which has been allowed may be later 'rejected in whole or in part, according to the equities of the case,' disallowance or subordination in light of equitable consideration may originally be made" (l. c. 303-05).

To the same effect, see **Re Pennsylvania Central Brewing Co.** (C. A. 3, 1943), 135 F. (2d) 60, 64; **City of New York v. Rassner** (C. A. 2, 1942), 127 F. (2d) 703, 706; **Columbia Foundry Co. v. Lochner** (C. A. 4, 1949), 179 F. (2d) 630, 634; **Torrington Co. v. Sidway-Topliff Co.** (C. A. 7, 1934), 70 F. (2d) 949, 953, 955; 6 Am. Jur., Bankruptcy, Sec. 35; 8 C. J. S., Bankruptcy, Sec. 467; Remington on Bankruptcy, 5th Edition, Vol. 1, Sec. 22.

In the last quoted text, it is said at pages 47-48:

> "The administration of bankrupt estates should be conducted on broad equitable lines, with a view to recognizing and enforcing the rights of all parties, whether legal or equitable. The bankruptcy Court, being a court of equity, looks through the form to the substance of the transaction. It has incidental power to grant any equitable relief which may be necessary in the administration and distribution of the estate: thus, it may order specific performance, it may reform written instruments or decree restitution, even though no offer to return was pleaded."

Courts of Bankruptcy are invested with "such jurisdiction at law and in equity as will enable them to exercise original jurisdiction" in bankruptcy proceedings. Title 11, U. S. C. A., Sec. 11. This jurisdiction is not, however, plenary jurisdiction, but is limited to the power to apply rules and principles of equity jurisprudence in the exercise

of bankruptcy jurisdiction. **Evarts v. Eloy Gin Corp. et al.** (C. A. 9, 1953), 204 F. (2d) 712, 715. One of the classes of jurisdiction of the bankruptcy court in addition to the jurisdiction conferred by Section 2 of the Bankruptcy Act, Title 11, U. S. C. A., Section 11, is that conferred by Section 23 of the Bankruptcy Act, Title 11, U. S. C. A., Section 46 (a), wherein it is provided:

> "The United States district courts shall have jurisdiction of all controversies at law and in equity as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants."

The District Court sitting in bankruptcy in the exercise of the jurisdiction conferred upon that Court by Sections 2 and 23 of the Bankruptcy Act, 11 U. S. C. A., Sections 11 and 46, should have recognized and applied the universal and age-old equitable principle that it would be shockingly inequitable and unjust to permit the petitioner, as a Reorganization Trustee, to retain for the benefit of the bankrupt estate, both the real estate and the money paid by respondent for the purchase. The Court of Appeals was clearly correct on the record here in reversing the District Court and awarding the respondent, as an innocent and good faith purchaser, equitable relief in his controversy against the Reorganization Trustee concerning the property acquired and claimed by that trustee.

CONCLUSION.

The Petition for a Writ of Certiorari should be denied because the decision of the Court of Appeals for the Eighth Circuit is not in conflict with any decision of this Court

or of another Court of Appeals; the importance of the question presented and its relation to the administration of the National Bankruptcy Act is limited only to the particular litigants here and is founded on the peculiar facts of this case; and the Court of Appeals decision was correct.

Respectfully submitted,—

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